

BEFORE THE  
POSTAL REGULATORY COMMISSION  
WASHINGTON, D.C. 20268-0001

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*In the Matter of:*

Pimmit Branch  
Falls Church, Virginia 22043  
(Elaine J. Mittleman, Petitioner)

Docket No. A2011-90

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**ANSWER OF UNITED STATES POSTAL SERVICE IN OPPOSITION TO  
PETITIONER'S MOTION DATED JANUARY 17, 2012,  
TO RESET THE EXPIRATION DATE OF THE  
COMMISSION'S 120-DAY DECISIONAL SCHEDULE**  
(January 19, 2012)

By means of Order No. 882, the Postal Regulatory Commission (Commission) docketed correspondence from Elaine J. Mittleman (Petitioner), assigning PRC Docket No. A2011-90 as an appeal pursuant to 39 U.S.C. § 404(d).<sup>1</sup> On January 17, 2012, the Petitioner filed a Motion to Reset the Expiration Date of the Commission's 120-Day Decisional Schedule in this docket.<sup>2</sup> As explained below, the Commission should deny this motion.

As an initial matter, the United States Postal Service (Postal Service) renews the arguments that the Commission lacks jurisdiction to hear Petitioner's appeal.<sup>3</sup> This appeal concerns a branch, and not a Post Office for purposes of 39 U.S.C. § 404(d). Section 404(d) does not apply to retail locations such as branches that are subordinate to a Post Office. In the Postal Service's view,

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<sup>1</sup> PRC Order No. 882, Notice and Order Accepting Appeal and Establishing Procedural Schedule, PRC Docket No. A2011-90, September 29, 2011.

<sup>2</sup> Motion of Petitioner to Reset the Expiration Date of the Commission's 120-Day Decisional Schedule, PRC Docket No. A2011-90, January 17, 2012.

<sup>3</sup> Initial Comments of the United States Postal Service, section 1 (pp. 2-7), PRC Docket No. RM2011-13, October 3, 2011.

Congress knowingly used “Post Office” in its technical sense, thereby excluding stations and branches from the scope of 39 U.S.C. § 404(d).<sup>4</sup>

The motion that the petitioner filed on January 17, 2012, includes two requests. First, the Petitioner requested the Commission “to reset the expiration date of the Commission’s 120-day decisional schedule, pursuant to 39 U.S.C. § 404(d)(5).”<sup>5</sup> In addition, the Petitioner requested that the decisional schedule “be reset to January 25, 2012, rather than January 20, 2012,”<sup>6</sup> “to permit additional time to obtain and review information about the move of the Falls Church Main Post Office.”<sup>7</sup>

Concerning the Petitioner’s first request that the Commission “reset the expiration date of the Commission’s 120-day decisional schedule,”<sup>8</sup> such a request is contrary to the very statute pursuant to which Petitioner bases her motion. Petitioner cannot argue that the statute applies and that the statute does not apply. According to 39 U.S.C. § 404(d)(6),

(6) For purposes of paragraph (5), any appeal received by the Commission shall –  
(A) if sent to the Commission through the mails, be considered to have been received on the date of the Postal Service postmark on the envelope or other cover in which such appeal is mailed: or

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<sup>4</sup> See Supplemental Comments of United States Postal Service, PRC Docket No. A2011-90, December 16, 2011, at 2-3; Comments of United States Postal Service, PRC Docket No. A2011-90, November 21, 2011, at 1; Answer of United States Postal Service in Opposition to Petitioner’s Motion to Request the United States Postal Service to Supplement the Record, PRC Docket No. A2011-90, October 25, 2011, at 2; United States Postal Service Notice and Application for Non-Public Treatment, PRC Docket No. A2011-90, October 12, 2011, at 1-2; Response of United States Postal Service to Petitioner’s Application for Suspension of Discontinuance for the Pimmit Branch, Falls Church, Virginia 22043, PRC Docket No. A2011-90, October 7, 2011, at 1-2

<sup>5</sup> Motion of Petitioner to Reset the Expiration Date of the Commission’s 120-Day Decisional Schedule, PRC Docket No. A2011-90, January 17, 2012, at 1.

<sup>6</sup> *Id.*, at 6.

<sup>7</sup> *Id.*, at 5.

<sup>8</sup> *Id.*, at 1.

(B) if otherwise lawfully delivered to the Commission, be considered to have been received on the date determined based on any appropriate documentation or other indicia (as determined under regulations of the Commission).<sup>9</sup>

The Notice of Filing under 39 U.S.C. § 404(d) issued by the PRC in this docket on September 28, 2011, states that “The petition for review was filed by Elaine J. Mittleman (Petitioner) and is postmarked September 22, 2011.”<sup>10</sup> Pursuant to 39 U.S.C. § 404(d)(6), the Commission considered the appeal to have been received by the Commission on the date of the Postal Service postmark. Section 404(d)(5) states that “The Commission shall make a determination” “no later than 120 days after receiving any appeal under this paragraph.”<sup>11</sup> Because January 20, 2012, is 120 days after September 22, 2011, in accordance with 39 U.S.C. § 404(d)(5) and (6), the Commission is required to make a determination no later than January 20, 2012. Thus, the Commission established January 20, 2012, as the date for the “Expiration of the Commission’s 120-day decisional schedule” in the procedural schedule for this appeal.<sup>12</sup> Therefore, the Petitioner’s request to reset the expiration date for this appeal should be denied, because the Commission established the expiration date of the Commission’s 120-day decisional schedule for this appeal in accordance with 39 U.S.C. § 404(d)(5) and (6).

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<sup>9</sup> 39 U.S.C. § 404(d)(6).

<sup>10</sup> Notice of Filing under 39 U.S.C. § 404(d), PRC Docket No. A2011-90, September 28, 2011, at 1.

<sup>11</sup> 39 U.S.C. § 404(d)(5).

<sup>12</sup> Notice and Order Accepting Appeal and Establishing Procedural Schedule, PRC Docket No. A2011-90, September 29, 2011, at 5.

Second, the Petitioner requests that the decisional schedule should “be reset to January 25, 2012, to permit additional time to obtain and review information about the move of the Falls Church Main Post Office.”<sup>13</sup> The Postal Service urges the Commission to deny this request because the Commission does not have authority, pursuant to 39 U.S.C. § 404(d)(5) and (6), to extend the 120-day decisional schedule beyond January 20, 2012. In addition, the Commission should deny this request because such information is not germane to the discontinuance of the Pimmit Branch by the Postal Service. The Petitioner filed a motion on October 18, 2011, which included a similar request that the Postal Service “provide information and supplement the record in this appeal about the planned relocation of the Falls Church Post Office, which is presently located at 301 W. Broad Street, Falls Church, VA 22046.”<sup>14</sup> On October 25, 2011, the Postal Service filed an answer to that motion, stating that the Commission should deny the Petitioner’s request because plans concerning the carrier annex at 301 W. Broad Street, Falls Church, VA “were not germane to the discontinuance of the Pimmit Branch by the Postal Service.”<sup>15</sup> On November 29, 2011, the Commission issued an order, denying Petitioner’s motion to supplement the record. That order stated that the Commission was “not

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<sup>13</sup> Motion of Petitioner to Reset the Expiration Date of the Commission’s 120-Day Decisional Schedule, PRC Docket No. A2011-90, January 17, 2012, at 5.

<sup>14</sup> Motion of Petitioner to Request the United States Postal Service to Supplement the Record concerning the Relocation of the Main Post Office in Falls Church, Virginia 22046, October 18, 2011, at 3-4.

<sup>15</sup> Answer of United States Postal Service in Opposition to Petitioner’s Motion to Request the United States Postal Service to Supplement the Record, PRC Docket No. A2011-90, October 25, 2011, at 3.

persuaded that the information sought by Petitioner is relevant to this appeal.”<sup>16</sup>

The Commission provided the following reasons:

- “First, the facility at 301 W. Broad Street serves as a carrier annex. It provides no postal retail services. Relocation of the carrier annex would not be subject to review under section 404(d).”<sup>17</sup>
- “Second, that facility is not identified as a potential access point for retail services in the record below.”<sup>18</sup>
- “Third, any information with respect to the possible relocation would be speculative and outside the record that was before the Postal Service. See 39 U.S.C. § 404(d)(5).”<sup>19</sup>

Petitioner has accordingly exhausted her opportunity to request that the administrative record be supplemented with information concerning “the planned relocation of the Falls Church Post Office, which is presently located at 301 W. Broad Street, Falls Church, Virginia 22046.”<sup>20</sup> Petitioner’s renewed motion is therefore barred by principles of issue preclusion and res judicata. The Postal Service accordingly urges the Commission to deny Petitioner’s request in this motion.

For the reasons set forth above, the Postal Service urges the Commission to deny the motion filed by the Petitioner on January 17, 2012.

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<sup>16</sup> PRC Order No. 1005, Order on Motions to Supplement the Record and Modifying Procedural Schedule, PRC Docket No. A2011-90, November 29, 2011, at 2.

<sup>17</sup> *Id.*, at 2.

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*, at 3.

<sup>20</sup> Motion of Petitioner to Request the United States Postal Service to Supplement the Record Concerning the Relocation of the Main Post Office in Falls Church, Virginia 22046, PRC Docket No. A2011-90, January 13, 2012, at 2; see also Motion of Petitioner to Request the United States Postal Service to Supplement the Record concerning the Relocation of the Main Post Office in Falls Church, Virginia 22046, October 18, 2011, at 3-4.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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